



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

October 7, 2002

Mr. Mark V. Gurnik  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

EPA Region 5 Records Ctr.



265575

Re: Comments on Ellsworth Industrial Park Draft AOC

Dear Mark:

Thank you for relaying comments on behalf of the Illinois EPA. I propose to address those comments as follows:

1) After I sent you the draft AOC, I added newly developed language from U.S. EPA Headquarters that addresses the community relations and also potential funding for technical assistance to qualified community groups. While this language is less detailed than the language Carol Fuller forwarded, I believe it adequately addresses the issue. Please let me know if you agree:

2.7 Community Relations and Technical Assistance Plan

U.S. EPA will prepare a Community Relations Plan, in consultation with IEPA and in accordance with U.S. EPA guidance and the NCP. Respondents shall provide information and conduct other activities as requested by U.S. EPA to support community relations programs. If a community group requests funding for technical assistance, within 30 days after notification by U.S. EPA of such a request, Respondents shall prepare a Technical Assistance Plan. The Technical Assistance Plan shall provide for funding and administration of \$50,000 in funds provided by Respondents to be used by selected qualified representatives of the community for the purpose of providing technical assistance during the response activities conducted under this Order at the Site and through U.S. EPA's issuance of the Record

of Decision ("ROD") based on the RI/FS conducted pursuant to this Order. Respondents will provide and administer any additional amounts needed if the selected qualified community group demonstrates such a need (under the standards provided in 40 C.F.R. §35.4065) prior to U.S. EPA's issuance of a ROD for this Site.

2) The comment concerning financial assurance did not suggest any specific changes, but expressed concern that the companies not be permitted to use their own net worth as assurance in lieu of some more site-specific mechanism. I believe that Section XXI of the draft AOC is clear that a site-specific mechanism is required:

Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to U.S. EPA, funded sufficiently to perform the work and any other obligations required under this Order, including a margin for cost overruns.

I therefore don't propose to make any change to the AOC, but we will be mindful of this concern during the course of negotiations.

3) The current draft AOC essentially defers the issue of past cost recovery for U.S. EPA. I am reluctant to have the PRPs' desire for a release from those costs, and our potential difficulty in obtaining approval for such a release, derail the timing of the settlement. It would therefore be difficult for U.S. EPA to include past cost recovery for IEPA, which is not a party to the AOC.

Section 104 of CERCLA, however, *requires* that the PRPs agree to pay oversight costs as part of an AOC for performance of an RI/FS. I am assuming that, per our usual practice, IEPA's ongoing RI/FS oversight activities would be conducted and funded under a cooperative agreement with U.S. EPA. U.S. EPA would then be able to recover those costs from the PRPs. That should address your concern at least with respect to future costs.

4) I have corrected the two typographical errors you pointed out and appreciate your close review of the draft.

Please let me know at your earliest possible convenience if these proposed resolutions are acceptable.

Sincerely yours,



Thomas J. Krueger  
Associate Regional Counsel

cc: Mazin Enwiya, U.S. EPA